

1 BILL LOCKYER, Attorney General  
of the State of California  
2 MARGARET A. LAFKO,  
Supervising Deputy Attorney General  
3 T. MICHELLE LAIRD, State Bar No. 162979  
Deputy Attorney General  
4 California Department of Justice  
110 West "A" Street, Suite 1100  
5 San Diego, CA 92101  
  
6 P.O. Box 85266  
San Diego, CA 92186-5266  
7 Telephone: (619) 645-2323  
Facsimile: (619) 645-2061  
8  
9 Attorneys for Complainant

10 **BEFORE THE**  
11 **BOARD OF REGISTERED NURSING**  
12 **DEPARTMENT OF CONSUMER AFFAIRS**  
**STATE OF CALIFORNIA**

13 In the Matter of the Accusation Against:

14 **CATHRYN LEE PODD**  
5472 Panoramic Lane  
15 San Diego, CA 92121

16 Registered Nurse License No. 496828

17 Respondent.

Case No.

OAH No. 2007-181

**ACCUSATION**

18  
19 Complainant alleges:

20 **PARTIES**

- 21 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation  
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing  
23 (Board).  
  
24 2. On or about October 31, 1993, the Board issued Registered Nurse License  
25 Number 496828 to Cathryn Lee Podd (Respondent). The license expired on June 30, 2005.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Board under the authority of  
3 Business and Professions Code section 2700, et. seq. All section references are to the Business  
4 and Professions Code unless otherwise indicated.

5 4. Section 2764 provides, in pertinent part, that the expiration of a license  
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the  
7 licensee or to render a decision imposing discipline on the license. Under Code section 2811(b),  
8 the Board may renew an expired license at any time within eight years after the expiration.

9 5. Section 118, subdivision (b), provides, in pertinent part, that the expiration  
10 of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action  
11 during the period within which the license may be renewed, restored, reissued or reinstated.

12 **STATUTORY PROVISIONS**

13 6. Section 482 of the Code states, in pertinent part:

14 Each board under the provisions of this code shall develop criteria to  
15 evaluate the rehabilitation of a person when:

16 . . . .

17 (b) Considering suspension or revocation of a license under Section 490.

18 Each board shall take into account all competent evidence of rehabilitation  
furnished by the applicant or licensee.

19 7. Section 490 of the Code states:

20 A board may suspend or revoke a license on the ground that the licensee has been  
21 convicted of a crime, if the crime is substantially related to the qualifications, functions,  
22 or duties of the business or profession for which the license was issued. A conviction  
23 within the meaning of this section means a plea or verdict of guilty or a conviction  
24 following a plea of nolo contendere. Any action which a board is permitted to take  
following the establishment of a conviction may be taken when the time for appeal has  
elapsed, or the judgment of conviction has been affirmed on appeal, or when an order  
granting probation is made suspending the imposition of sentence, irrespective of a  
subsequent order under the provisions of Section 1203.4 of the Penal Code.

25 8. Section 493 of the Code states, in pertinent part:

26 [T]he record of conviction of a crime shall be conclusive evidence of the fact that the  
27 conviction occurred, but only of that fact, and the board may inquire into the  
28 circumstances surrounding the commission of the crime in order to fix the degree of  
discipline or to determine if the conviction is substantially related to the qualifications,  
functions, and duties of the licensee in question.

1                   9.       Section 2750 states:

2                   Every certificate holder or licensee, including licensees holding temporary  
3                   licenses, or licensees holding licenses placed in an inactive status, may be  
4                   disciplined as provided in this article. As used in this article, "license" includes  
5                   certificate, registration, or any other authorization to engage in practice regulated  
6                   by this chapter. The proceedings under this article shall be conducted in  
7                   accordance with Chapter 5 (commencing with Section 1150) of Part 1 of Division  
8                   3 of Title 2 of the Government Code, and the board shall have all the powers  
9                   granted therein.

10                   10.       Section 2761, subdivisions (a) and (f), together state that the Board may  
11                   take disciplinary action against a licensee for unprofessional conduct when a licensee has a  
12                   "[c]onviction of a felony or of any offense substantially related to the qualifications, functions  
13                   and duties of a registered nurse, in which event the records of conviction shall be conclusive  
14                   evidence thereof."

15                   11.       Section 2762 states that it is unprofessional conduct for a licensee to do  
16                   any of the following:

17                   (a) Obtain or possess in violation of law, or prescribe, or except as  
18                   directed by a licensed physician and surgeon, dentist, or podiatrist administer to  
19                   himself or herself, or furnish or administer to another, any controlled substance as  
20                   defined in Division 10 (commencing with Section 11000) of the Health and Safety  
21                   Code or any dangerous drug or dangerous device as defined in Section 4022.

22                   (c) Be convicted of a criminal offense involving the prescription,  
23                   consumption, or self-administration of any of the substances described in  
24                   subdivisions (a) and (b) of this section, or the possession of, or falsification of a  
25                   record pertaining to, the substances described in subdivision (a) of this section, in  
26                   which event the record of the conviction is conclusive evidence thereof.

27                   12.       Title 16 of the California Code of Regulations, section 1444, states in  
28                   pertinent part:

29                   A conviction or act shall be considered to be substantially related to the  
30                   qualifications, functions or duties of a registered nurse if to a substantial degree it  
31                   evidences the present or potential unfitness of a registered nurse to practice in a  
32                   manner consistent with the public health, safety, or welfare.

33                   13.       Title 16 of the California Code of Regulations, section 1445, states in  
34                   pertinent part:

35                   (b) When considering the suspension or revocation of a license on the  
36                   grounds that a registered nurse has been convicted of a crime, the board, in  
37                   evaluating the rehabilitation of such person and his/her eligibility for a license will  
38                   consider the following criteria:

- 1 (1) Nature and severity of the act(s) or offense(s).
- 2 (2) Total criminal record.
- 3 (3) The time that has elapsed since commission of the act(s) or offense(s).
- 4 (4) Whether the licensee has complied with any terms of parole,  
5 probation, restitution or any other sanctions lawfully imposed against the licensee.
- 6 (5) If applicable, evidence of expungement proceedings pursuant to  
7 Section 1203.4 of the Penal Code.
- 8 (6) Evidence, if any, of rehabilitation submitted by the licensee.

8 14. **Drugs:** Methamphetamine is a Schedule II controlled substance pursuant  
9 to Health and Safety Code section 11055(d)(2).

10 **Respondent's November 14, 2004 Felony Conviction for Possession**  
11 **for Sale of Methamphetamine on October 4, 2004**

12 **FACTUAL BASIS**

13 15. On or about October 4, 2004, San Diego Police Officers conducted a  
14 traffic stop of a vehicle. Respondent was the driver and only occupant of the vehicle.

15 16. During a consensual search of Respondent, the officers found a plastic bag  
16 containing a substance they believed to be methamphetamine. The officers then searched  
17 Respondent's vehicle and found drug paraphernalia, including 3 pipes, an electronic scale, a  
18 metal spoon, two blue plastic torches, a plastic bong, 2 butane torch refill cans, a box of  
19 "Ziplock" bags, and two additional bags containing a substance believed to be  
20 methamphetamine. Respondent was arrested for transporting/selling controlled substances,  
21 possession of controlled substances, and possession of narcotics paraphernalia.

22 17. The substances were taken to the crime laboratory where they were  
23 weighed (approximately 18.68 grams) and tested positive for methamphetamine.

24 18. On or about October 6, 2004, a felony complaint was filed in *People v.*  
25 *Cathryn Lee Podd*, San Diego County Superior Court case number CD185993. Respondent was  
26 charged in count 1 with transporting controlled substances and in quantities not for personal use,  
27 specifically methamphetamine, in violation of Health and Safety Code section 11379(a) and  
28 Penal Code section 1210(a); in count 2 with possession of a controlled substance for sale in

1 violation of Health and Safety Code section 11378; and in count 3 with possession of narcotics  
2 paraphernalia used for injecting or smoking a controlled substance in violation of Health and  
3 Safety Code section 11364.

4 19. On or about November 17, 2004, Respondent entered a guilty plea to  
5 count 2, felony possession of a controlled substance for sale in violation of Health and Safety  
6 Code section 11378. Respondent was placed on formal probation for 3 years, and ordered to  
7 comply with terms of probation, which included attendance at AA or NA meetings, not to use or  
8 possess any controlled substance without a valid prescription, to abstain from the use of alcohol,  
9 to register as a convicted person pursuant to Health and Safety Code section 11590, and to pay  
10 various fees and fines.

11 **FIRST CAUSE FOR DISCIPLINE**

12 (Unprofessional Conduct - Substantially Related Conviction)

13 20. Respondent is subject to disciplinary action under sections 490 and 2761,  
14 subdivisions (a) and (f), in that she was convicted of a crime substantially related to the  
15 qualifications, functions and duties of a registered nurse. Specifically, Respondent pled guilty on  
16 or about November 17, 2004 to possessing methamphetamine for sale in violation of Health and  
17 Safety Code section 11378, as described in paragraphs 15-19.

18 **SECOND CAUSE FOR DISCIPLINE**

19 (Unprofessional Conduct - Conviction Involving Possession of Controlled Substance)

20 21. Respondent is subject to disciplinary action under section 2762,  
21 subdivisions (a) and (c), in that she was convicted of a crime involving the possession of a  
22 controlled substance. Specifically, Respondent pled guilty on or about November 17, 2004 to  
23 possessing methamphetamine for sale in violation of Health and Safety Code section 11378, as  
24 described in paragraphs 15-19.

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1 COST RECOVERY/RESTITUTION

2 22. Section 125.3 provides, in pertinent part, that the Board may request the  
3 administrative law judge to direct a licensee found to have committed a violation or violations  
4 of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and  
5 enforcement of the case.

6 PRAYER


7 WHEREFORE, Complainant requests that a hearing be held on the matters herein  
8 alleged, and that following the hearing, the Board issue a decision:

9 1. Revoking or suspending Registered Nurse License Number 496828, issued  
10 to Cathryn Lee Podd.

11 2. Ordering Cathryn Lee Podd to pay the Board the reasonable costs of the  
12 investigation and enforcement of this case, pursuant to Business and Professions Code section  
13 125.3; and,

14 3. Taking such other and further action as deemed necessary and proper.

15 DATED: 12/21/06

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19 RUTH ANN TERRY, M.P.H., R.N.  
20 Executive Officer  
21 Board of Registered Nursing  
22 State of California  
23 Complainant  
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